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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,502	07/30/2003	Gary Mitchell Davenport	P138	7908

27752      7590      10/03/2005

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EXAMINER

JONES, DAMERON LEVEST

ART UNIT      PAPER NUMBER

1618

DATE MAILED: 10/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/630,502

Applicant(s)

DAVENPORT ET AL.

Examiner

D. L. Jones

Art Unit

1618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 July 2005 and 17 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 1-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/17/03</u> . | 6) <input type="checkbox"/> Other: _____  |

800

Art Unit: 1618

## CLARIFICATION OF THE RECORD

1. It should be noted that some of the originally filed claims (specifically claims 21, 22, and 23) are missing. Thus, according to 37 CFR 1.126, claims 24-30 have been renumbered as claims 21-27.

**Note:** Claims 1-27 are pending.

## RESPONSE TO APPLICANT'S ELECTION

2. Applicant's election with traverse of Group II filed 7/26/05 is acknowledged. The traversal is on the following grounds: (1) in order for a restriction to be proper, the inventions must be distinct/independent and (2) it must be a burden on the Examiner to search all the claims. Furthermore, Applicant asserts that any prior art search for a specific polyol fatty acid polyester will be coextensive with any search for any of the disclose and claimed polyol fatty acid polyester of Groups I, II, and II. This is found non-persuasive-in-part for the following reasons: (1) prior art directed to a product (i.e., composition) comprising the a polyol fatty acid polyester would neither anticipate nor render obvious a method of treating a hairball or increasing fecal hair excretion because the product may have a different utility. For evidence of the Examiner's position, please see the 102 rejection section below. As for Group III, the claims will be combined with Group II because both sets of claims are directed to compositions comprising a polyol fatty acid polyester. Hence, the restriction requirement is still deemed proper and is therefore made FINAL.

Art Unit: 1618

The Examiner acknowledges the election of sucrose ester as the polyol fatty acid polyester.

**Note:** Initially, Applicant's elected species was searched. Thus, since prior art was found which could be used to reject the instant invention, the search was not further expanded.

### **WITHDRAWN CLAIMS**

3. Claims 1-18 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### **112 REJECTIONS**

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 27 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 27: The claim as written is ambiguous because it is unclear what Applicant intend by the phrase 'high moisture composition' since 'high' is a relative term.

### **102 REJECTIONS**

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 1618

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 19-27 are rejected under 35 U.S.C. 102(b) as being anticipated by De et al (JP 02227051).

**JP 02227051** is directed to the preparation of low calorie food comprising polyol fatty acid polyesters supplemented with dietary fiber. In particular, the reference discloses a composition containing cellulose fiber and sucrose polyester. The low calorie food has 10 to 50 weight percent whole fat content and 30 to 100 weight percent of the whole fat consists of indigestible polyol fatty acid ester. Thus, both Applicant and JP 02227051 disclose a composition comprising a polyol fatty acid polyester (as set forth in independent claim 19) which has at least 0.05 weight percent polyol fatty acid polyester (as set forth in independent claim 21) [see entire document, especially, the two abstracts summarizing the Japanese patent].

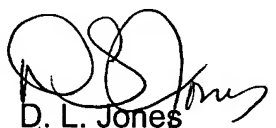
**Note:** Applicant is reminded that a recitation of the intended utility in the preamble does not impart patentability to a known composition (*In re Spada*, 911 F. 2d 705, 15 USPQ 2d 1655 (Fed. Cir. 1990)).

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. L. Jones whose telephone number is (571) 272-0617. The examiner can normally be reached on Mon.-Fri., 6:45 a.m. - 3:15 p.m..

Art Unit: 1618

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



D. L. Jones  
Primary Examiner  
Art Unit 1618

September 29, 2005